

To: Commissioner Vincent Barabba, other members of the California Citizens Redistricting Commission

We have carefully reviewed Commissioner Barabba's memo regarding our December 2011 story on California's congressional redistricting. We see nothing that undermines our conclusions: As we detailed, when it came to drawing congressional district lines in California, politically motivated actors were able to manipulate the process.

As journalists we have no position on the best way for states to conduct redistricting. Our goal was simply to bring attention to questionable behavior by elected representatives.

Commissioner Barabba's memo did bring one mistake to our attention. While the Institute's Doug Johnson is affiliated with a higher education institution and works with undergraduates, he is a fellow and not, as we originally wrote, a professor. We have corrected the story accordingly. Thank you for bringing this to our attention.

Below, we've responded to specific points raised in Commissioner Barabba's memo.

On Barabba's contention that we didn't sufficiently acknowledge citizen participation in the commission's work:

To illustrate citizen participation, Commissioner Barabba points us to two well-attended commission meetings in June, one of which included the release of the commission's first map drafts to the media and public, and the other of which had a possible vote on the maps on the agenda. But, as we noted, those early maps were thrown out. That's why we focused on the meetings in the months after that.

We never described the meetings as "secret." Instead, we pointed out that it wasn't practical for members of the public to participate in the meetings. In contrast to the early meetings held across the state, these later ones were held only in Sacramento.

The commissioners often jumped from discussing one district to another. For a concerned citizen to take part in the discussions about their community, they might have to spend days or weeks following testimony and waiting for an invitation. As Commissioner Barabba detailed, anyone could watch the hours of video of the proceedings or read the hundreds of pages of transcripts. Who had the time? Political professionals.

Pointing out that the commission was swayed by emails received in real time serves to highlight this point. Those who were watching the testimony live were the ones able to participate with greatest impact. Both statements to ProPublica by those involved and Twitter traffic indicate that many of the emails received in live time during the hearings were organized by consultants, parties or candidates who were much more able to devote the hundreds of hours necessary to carefully track the process.

On the influence of the Valley Industry and Commerce Association on the redistricting process:

Commissioner Barabba brings up the Valley Industry and Commerce Association, asserting that the original maps of the San Fernando Valley submitted by the group bear little resemblance to the final district lines in the area.

But it is misleading to compare the final maps to VICA's initial submissions, which were made with limited knowledge of what the commission was considering. Instead, VICA was able to influence the process by carefully tracking deliberations throughout, and then submitting what were portrayed as helpful tweaks. It is another good illustration of how well-resourced, savvy players could have outsized influence.

Not only did VICA submit their initial maps of the complete valley, they also submitted many more maps proposing tweaks of interim district drafts produced by the commission, via direct communication with commissioners. VICA's consultant, Redistricting Partners' Paul Mitchell, also provided the commission help with its own maps while he was also working on redistricting for politicians.

Only some of the above-referenced tweaks submitted by Mitchell on behalf of VICA appear in the public archive of submitted maps and testimony available on the commission's website. The rest were obtained by ProPublica.

It is clear that these incremental changes to district lines did find their way into the final maps.

In the committee's own words, during the July 16th business meeting, Commissioner Parvenu stated, "We honored the maps that were presented to us by VICA, as well as Redistricting Partners."

[Link: http://wedrawthelines.ca.gov/downloads/transcripts/201107/transcripts_20110716_sacto.pdf]

We described VICA as an additional Mitchell client, and included a reference to them in our post-election story, to help explain why final district lines were clearly more friendly to Rep. Brad Sherman than Rep. Howard Berman. This is an important point, because the matchup of Berman and Sherman is often cited as evidence that Democrats were not able to influence the redistricting process. We don't think this example shows that at all.

On Commissioner Barabba's contention that the final map of the San Fernando Valley was driven by the necessity of drawing a Latino seat, and not unduly influenced by consultants or politicians:

Yes, it was clear that there would be a Latino seat in the Valley. But the precise boundaries were up in the air. In the end, the seat was won by Tony Cardenas, who has long-standing ties to VICA President Stuart Waldman. [Link:

[tony-cardenas-20130101](#)]

Internal VICA emails obtained by ProPublica indicate that Waldman and VICA board members were following Cardenas's plans to run in a San Fernando-based Latino district even before final maps were released and felt the outcome would be beneficial for him.

"He's extremely pragmatic," VICA President Stuart Waldman, later told the *Los Angeles Times*. "He has the experience and the world view to be very helpful to us on business issues."

On the idea that commissioners were aware of politically motivated "community of interest" testimony:

All the deliberations and emails of the commission are public record. After analyzing them we were only able to find one instance where the motives behind consultant Paul Mitchell's testimony and submissions were questioned, though we now know he had multiple members of Congress as clients. Commission transcripts and emails do not show action based on that conversation.

On July 7th, 2011 -- long after the commission started its work -- in an email to Commissioner Ancheta [Link :http://wedrawthelines.ca.gov/downloads/public-records-act/pra_20110614_abrahms2_12_response_ward.pdf], Commissioner Ward raised alarm about Redistricting Partners, Paul Mitchell's firm, saying he was "concerned about the integrity of the maps they are offering." He went on: "I know the last thing any of us want is to allow our process to be corrupted or unfairly influenced by poisonous fruit."

"I think that's an important issue, but requires some thought and discussion because it poses the question of how we view the integrity of any of our sources," Ancheta replied. "You recently raised it in the context of Equality California's reliance on Redistricting Partners as their technical consultants, but it could apply to any individual or group that provides data or equivalency files to the commission. Do you have a proposal that you might want to bring forward that addresses the problem? We're still figuring out scheduling on line drawing, so I'm not sure exactly when we'd be getting to regular business next week."

"It seems so late to be having to have a discussion about how to analyze public comment," Ward wrote back. "I have been pushing this with chairs for some time. Obviously I think there are issues from ALL sorts of angles that pollutes our 'public comment'. But what to do with it at this late point I don't know," he goes on, suggesting that "Perhaps the best thing is to just raise the issue in open session as [community of interest] testimony is cited. I guess we can default to that."

But no public questioning appears in subsequent hearings regarding any of the districts discussed in our story, and many other districts where there was a high probability of political interference. If the commissioners did in fact know that testimony was potentially disingenuous, the record also shows that they never discussed it during line drawing sessions or business

meetings. If they did so, it was off the record.

On the idea that Rep. Laura Richardson losing her seat contradicts or disproves our story:

As Commissioner Barabba notes, Democratic former Rep. Laura Richard Richardson lost her seat in southern California. That doesn't undermine our piece. As we stated, demographics made it difficult for Democrats in Southern California to draw friendly lines for all incumbents there.

Richardson also had other drawbacks.

[Link: <http://articles.latimes.com/2012/aug/10/local/la-me-richardson-20120810>]. She had been subject of an ethics investigation for almost a year when the line-drawing process got underway, and also found to owe Sacramento County a substantial amount in unpaid property taxes. Once it was clear that Richardson would be running against fellow Democrat Janice Hahn, Hahn -- not Richardson -- received endorsements from the California Democratic Party and House Minority Leader Rep. Nancy Pelosi.

While Richardson was unsuccessful in her bid to influence the commission, we cited other instances of Democrats who did influence the commission's process.

On farmers and homemakers as members of the commission:

Commissioner Barabba criticizes us for ridiculing the non-professionals on the commission. But we did nothing of the sort. Contrary to what Commissioner Barabba wrote, we did not suggest that farmers "can't listen and implement the will of fellow citizens" or that a homemaker "is limited to tasks associated with the home."

What we do say is that individuals with those backgrounds would be less politically savvy than political operatives involved in redistricting for years or decades. We agree with your statement that, "by design, the commissioners were not like the political pros who did redistricting in the past."

On the idea that we are endorsing legislative redrawing of districts in California:

At no point in our story do we say that the previous process was superior.

On the subject of election results:

Commissioner Barabba writes that the results of last year's elections show Democrats did not, in fact, succeed in unduly influencing the commission. The commission may observe that the statements cited about future electoral outcomes are not our own, but from Democrats themselves. In any case, elections are driven by many factors.

In particular, along with redistricting, another large change introduced uncertainty into California elections: in 2012, instead of the Republican and Democratic candidates with the most votes in their respective primaries advancing into the general election, two candidates from the same party could advance if they were the top two vote recipients in the primary. In the case of Rep. Pete Stark, he won his primary by a large margin (42.1% to 36.2%). In years past that would have guaranteed him victory in the district that the commission drew. The implication that, because of adherence to fairness or community testimony, the commission drew a district that would be difficult for Stark to win, is not supported by facts.

On competitiveness of districts:

A common misconception, perhaps deliberate misrepresentation, of our story was that it applied to all districts in the state. In fact, it only addressed congressional redistricting. Thus, an analysis of state legislative districts by Ballotpedia -- or anyone else -- is not pertinent.

During our time covering redistricting, we spoke to many experts. One thing we learned is that there are dozens -- if not more -- ways to measure the fairness of districts. As Commissioner Barabba noted, we decided not to cite an analysis from the Public Policy Institute of California. We made that decision after carefully considering their research. In the end, we omitted their conclusions because, as the author himself told ProPublica, their analysis would not detect the kind of incumbent-specific advantages that our story was about. It is unlikely that any mathematical analysis would be able to take into account, for example, the advantage to Rep. Judy Chu of having her political and fundraising base in her district.

The analyses in the commissioner's memo are interesting, but the authors are trying to answer different questions about the final districts than those raised by our story.

Finally, we would like to point out that districts can be compact, apparently without political bias [Link:<http://projects.propublica.org/redistricting-maps/mcnerney>], contiguous, and/or prima facie Voting Rights Act compliant [Link:<http://www.propublica.org/article/how-dark-money-helped-republicans-hold-the-house-and-hurt-voters>] without upholding the idea that "Communities of interest shall not include relationships with political parties, incumbents, or political candidates. [Link:http://wedrawthelines.ca.gov/downloads/voters_first_act.pdf]

On U.S. Department of Justice approval of the state's districts:

Political makeup of districts, or incumbent advantage is not one of the criteria the DOJ considers in evaluating districts. They approve districts based on the absence of evidence of discrimination based on "race, color or membership in a language minority group." [Link: <http://www.justice.gov/crt/about/vot/redistricting.php>] Our story makes no statements regarding whether the commission's maps might be in violation of provisions in the Voting Rights Act.

On a referendum on the commission's districts:

If you are referring to California Proposition 40, Referendum on the State Senate Redistricting Plan, it did not pertain to congressional maps, which were the exclusive focus of our coverage.